IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE 1961-62

AND IN THE MATTER of a complaint by Allen Walls against Louis Lougheed who allegedly committed an unlawful act relating to apartment rental because of race and colour.

To: The Ontario Human Rights Commission.

Pursuant to my appointment by the Minister of Labour as a Board of Inquiry under the Ontario Human Rights Code 1961-62, I presided at a hearing, on July 24, 1968 at the Court House in Windsor, Ontario, to inquire into the complaint made by Mr. Walls. The Ontario Human Rights Commission was represented by Mr. Blenus Wright and the respondent Mr. Lougheed, although urged by the Commission to obtain legal advice, appeared on his own behalf without counsel. Because Mr. Lougheed was not represented by counsel, I attempted to see to it that he fully understood both the nature of the proceedings and every stage of the course of the proceedings by explaining to him the provisions of the Code, what was happening throughout the hearing, and what his rights were. Very shortly after the commencement of the hearing, at the suggestion of Mr. Wright who, it appears, from a conversation he had had with the respondent, believed that Mr. Lougheed would welcome a chance privately to discuss with me the nature of the proceedings with a view to seeing if the matters involved in the complaint could be

resolved without the necessity of a hearing, and, as the transcript of the proceedings shows, with the concurrence of Mr. Lougheed, I adjourned with Mr. Lougheed to the privacy of a consulting room. I used the opportunity to satisfy myself that Mr. Lougheed was in no doubt about the nature of the proceedings, the purpose and language of the Code and his rights. I took pains to see to it that Mr. Lougheed told me nothing about the facts which, if our discussion made it clear that the hearing should proceed, he might not want me to hear if he were represented by counsel. In my conversation with him I learned nothing of the merits of the case, further satisfied myself that Mr. Lougheed clearly did not want a lawyer and that it would be necessary to carry the hearing to a conclusion. Accordingly I reconvened the hearing and proceeded to hear the evidence and the submissions of the parties. At the conclusion of the direct evidence of the witnesses called by Mr. Wright, Mr. Lougheed conducted a cross-examination of each witness and when he concluded, because he was without the benefit of counsel, I questioned the witnesses to bring out points which Mr. Lougheed would, it seemed to me, have had brought out if he were represented by counsel. Similarly, after the completion of the evidence, and during the submissions of Mr. Wright, I raised certain issues with Mr. Wright, which arose out of the evidence and which, in my opinion, counsel for Mr. Lougheed

would have raised and which otherwise would likely have been ignored. I shall deal with some of these issues later in this report.

In essence, the complaint of Mr. Walls is that he was denied living accommodation, namely, a self-contained basement apartment, in a house owned by the respondent, Mr. Louis Lougheed, at 534 Parent Avenue in Windsor, Ontario, because of his race or colour. I intend now to turn to the facts as I find them upon a careful consideration of the evidence but before doing so let me say that, notwithstanding that Mr. Lougheed's denial of some of the facts, the evidence left me in no doubt that what occurred was what I shall state as established fact even though there was disagreement between the witnesses called by Mr. Wright on the one hand and Mr. Lougheed on the other hand. I make this statement because I am concerned to make it clear that I have not based my conclusions, that is to say, have not arrived at affirmative conclusions, on the basis of my disbelief in Mr. Lougheed's denials. It is questionable that valid findings of fact can rest on a non-acceptance by the finder-of-fact of a witness's denial. The denial, in other words, should not be treated as a substitute for affirmative evidence of the fact in question where the burden of establishing that fact does not rest on the denier. But, having said that, let me go on to add that Mr. Lougheed, who chose to give evidence on his own behalf, was not

a credible witness. In fact, it is a moderate statement to say that his testimony, weighed with his demeanour while testifying, taxes the credulity of a listener to an extreme degree.

On April 25, 1968, Mr. Walls noticed a classified advertisement which appeared in that day's edition of the Windsor Star which read as follows:

> "Two-room basement apartment, utilities paid, suit one person or abstainer couple, $15.00 weekly, 534 Parent Avenue, call 256-3509."

The municipal address, 534 Parent Avenue in the City of Windsor is the address of a house owned by Mr. Lougheed containing a self-contained apartment in the basement. It is this apartment that Mr. Lougheed was seeking to rent. In concluding that the respondent was offering his apartment to rent, I reject, but do not ignore, his testimony that the advertisement was not placed in the Star by him. He would have had me believe that one of his roomers had inserted the advertisement without his authority. I frankly do not believe Mr. Lougheed's denial of responsibility for the advertisement. As will appear shortly, he did not repudiate the advertisement when Mr. Walls telephoned him in response to the advertisement. Nor did he deny responsibility in his conversations with Mr. Marentette, the human rights officer of the Ontario Human Rights Commission. In any event, the complaint in this matter is not that the advertisement is of the kind that is prohibited by the Ontario Human Rights Code.

The fact is that Mr. Lougheed did have a self-contained apartment which he was offering to rent. He testified that the apartment was one which the Building Department of the City of Windsor had advised him he was not entitled to rent because it did not meet the qualifications of the City's Building Code. The proof adduced in respect of this testimony was the second page of a letter from the City. There was no way of telling, from the document produced by Mr. Lougheed, that the letter referred to his premises or to whom the letter was addressed. Furthermore, the apartment was vacant at the time the advertisement appeared and it was subsequently occupied by someone other than Mr. Walls. The evidence is insufficient to establish that the apartment could not, by law, be rented, and, on the other hand, was overwhelming that, in fact, Mr. Lougheed was offering it for rent.

Mr. Walls, the complainant, is a Canadian citizen and a Negro, and, at the time Mr. Lougheed's advertisement appeared in the Windsor Star, was living at Rural Route #3, Essex, which is almost twenty miles from Windsor. After reading the advertisement in the Star, Mr. Walls, who was then looking for an apartment for his wife and himself for a rental not exceeding $75.00 per month in order to be closer to his place of work in Windsor, telephoned the number given in the advertisement and eventually spoke to Mr. Lougheed.

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In this telephone conversation, in which Mr. Walls indicated he was calling with relation to the advertisement, Mr. Lougheed, not only did not repudiate the advertisement, but implicitly admitted that his apartment was for rent by telling Mr. Walls that someone else was coming to see the apartment that evening but that if Mr. Walls arrived there first perhaps they could come to some agreement. Mr. Walls decided to leave with his wife immediately to go to Mr. Lougheed's place to look at the apartment but before departing had a second thought. His experience in seeking accommodation was that the fact that he was a Negro meant that white landlords were disinclined to rent to him. While I have no doubt that Mr. Walls was justified in feeling that his colour militated against his chances of obtaining suitable accommodation, the fact is that he did feel that way, and as a result decided that he ought to make clear to Mr. Lougheed that he was "coloured" before running the risk of going all the way to Windsor only to receive the indignity of a refusal as soon as it was seen that he was not white. Accordingly, he telephoned Mr. Lougheed again and when he spoke to him he told him that he was "coloured", and asked him if that made a difference. The substance of Mr. Lougheed's reply was that it did make a difference. He told Mr. Walls about the different trouble coloured people got into and the trouble they caused. Understandably, Mr. Walls lost interest in the conversation

from that moment on, ended the conversation, and of course did not make any further effort to rent Mr. Lougheed's apartment. Mr. Lougheed testified that if Mr. Walls had continued to listen to him he would have heard Mr. Lougheed tell him that the City had forbidden the renting of the apartment. As I have indicated, it is my view that the City's position is not relevant. In any event, I do not believe Mr. Lougheed's version of the conversation.

I have used the word "coloured" deliberately in quotation marks, not only because that is the very word that Mr. Walls used, but also to highlight Mr. Lougheed's totally incredible explanation of his position. He testified that he did not use or understand the word "coloured" to refer to persons who were Negro. According to him, everyone is coloured, and to my direct question whether he had any picture in his mind of any shade when the word "coloured" was used by Mr. Walls he answered in the negative. He made the absurd statements that colour "would make a difference. If you had a green person living in your place, people would be going by to look at him and you would have a problem," and that because he himself had "tan and white and blue eyes and brown hair," he described himself as a coloured man. For the record it should be stated that Mr. Lougheed appears clearly to be a member of what is often referred to as the Caucasian or white race.

Mr. Lougheed's evidence left me in no doubt that in his mind negroes are not as good as whites. He knew from his own personal experience that he was brought up properly, but he did not know, he said, "how they teach their children, the Negro people, that is." That he had a low opinion of Negro people was clear from the conversation he had with Mr. Marentette, of the Ontario Human Rights Commission, who went to see him when Mr. Walls complained to the Commission after his telephone conversations with Mr. Lougheed. Mr. Lougheed constantly, with reference to Negro persons, used the word "niggers". I completely reject Mr. Lougheed's protestations that in his vocabulary "nigger" is not a reference to race or colour but only to destructiveness or character as a law-abiding citizen. A person who is destructive or who is not law-abiding is a 'higger" whether he be black or white or, one would infer, green. Mr. Lougheed's statements to Mr. Marentette to the effect that the Ontario Human Rights Code was "another one of those silly laws that we have" and that Negroes were making too many demands, pointing as an example, to the fact that they were now on the Windsor Police Force and Fire Department, are more in character with his attitude as I assessed it when he was testifying than his protestations that it was all a matter of semantics. At the end of his conversation with Mr. Marentette, Mr. Lougheed voluntarily signed a statement in the following form,

having full knowledge of its contents, and understanding perfectly what it meant:

> The Ontario Human Rights Commission May 14,1968.
> 74 Victoria Street
> Toronto 1, Ontario.
>
> I have owned this house at 534 Parent Avenue Windsor since 1953. There have always been roomers during that time. There are six tenants including a family of three in the self-contained apartment in the basement. In that time I have rented to a Negro family once and have refused to rent to Negroes since then.
>
> I specifically remember receiving a telephone call a few weeks ago from a man who said he was coloured and wanted to rent my basement apartment. He asked me if it mattered that he was coloured and I told him it did. I still refuse to rent to Negroes. I would prefer to have an empty house rather than to rent to coloured people and have my house destroyed.
>
> Louis Lougheed
>
> Louis Lougheed
> 534 Parent Ave.
> Windsor, Ontario.
> Tel. 256-3509.

I accept the statement as an accurate recapitulation of what took place and as an accurate reflection of Mr. Lougheed's attitude towards Negroes. It is entirely consistent with the other evidence relating to both these matters and which I have related. Having decided what the facts of this matter are, I must now turn to the language of the Ontario Human Rights Code 1961-62 and direct my attention to the question whether these facts fall within that language.

Section 3 of the Ontario Human Rights Code 1961-62 reads as follows:

> "No person, directly or indirectly, alone or with another, by himself or by the interposition of another shall,
>
> (a) deny to any person or class of persons occupancy of any commercial unit or any self-contained dwelling unit; or
> (b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or any self-contained dwelling unit,
>
> because of the race, creed, colour, nationality, ancestry or place of origin of such person or class of persons."

On the facts as I have stated them, that Mr. Lougheed offended against the spirit of section 3 admits of no doubt. In view of the educational purpose of human rights legislation it may be sufficient to conclude simply that a respondent's conduct was in breach of the spirit of the enactment. For the purpose of formulating recommendations which conceivably might form the basis of a ministerial order under section 13(6) of the Code, the breach of which is, by virtue of section 14, an offence, it seems to me to be desirable to determine whether the violation of the spirit of the enactment was also a violation of the letter of the enactment.

I have already indicated that, at the hearing, because the respondent was not represented by counsel, I took it upon myself to raise with Mr. Wright certain matters of interpretation which seemed to me to arise out of the facts of this complaint. One of them was

whether section 3(b) had any possible application to the facts. Could it be said that Mr. Lougheed had discriminated against any person or class of persons with respect to any term or condition of occupancy of the self-contained dwelling unit because of the race or colour of such person or class of person? It was argued that to say in effect "I will rent to an applicant on condition that he must be a white person" is, if not discrimination against a coloured applicant, at least discrimination against a class of persons, i.e. coloured persons, with respect to a condition of occupancy because of the colour of such class of persons. Although this argument is inviting and not without a persuasive quality, on the whole I am inclined to the view that it should not prevail. It seems to me that the term or condition contemplated by section 3(b) is not a term or condition relating to the race or colour of the applicant but rather what the subsection strikes at is discrimination against a person with respect to a term or condition of occupancy. What, in other words, it seeks to prevent is the imposition of a term or condition of occupancy, e.g. the rent payable, the length of the term of a lease, or requirements relating to decorating that is more severe for, say, a coloured person than it would be for a white person. I am not entirely satisfied that it is the intended interpretation of section 3(b) that it aims at preventing a landlord from making a statement to a coloured applicant for an apartment to the effect that he will rent the

apartment to the applicant, who, by definition is coloured, on condition that he be white. That conduct appears to me to be the sort of conduct that would be caught by section 3(a), namely, denying the applicant the apartment because of his colour. Section 3(b) was, more likely than not, intended to deal with a situation not already covered by section 3(a). However, to repeat, I do not rule out the possibility that Mr. Lougheed's conduct was a contravention of section 3(b) of the Code. But I am of the view that it is not essential that this question be determined because the matter can be adequately dealt with under section 3(a).

I turn, then, to section 3(a) of the Code and deal with another point which I raised with Mr. Wright at the hearing. This subsection, it will be recalled, provides that no person shall deny to any person any self-contained dwelling unit because of the race or colour of such person. The question of interpretation revolves around the word "deny". Mr. Walls never inspected the apartment which Mr. Lougheed was seeking to rent. He may not have been prepared to take it had he seen it; he did not, in fact, apply for a tenancy. He made inquiries about the apartment and when he was affronted by Mr. Lougheed's rudeness, dropped the matter. Where no application for a tenancy is made or where no request for the apartment is made, can it be said that the landlord did "deny" to the prospective tenant the dwelling unit because of his race or colour? I have given this question

much consideration and have concluded that it must be answered in the affirmative. To do otherwise would be to do violence to the purpose of the statute and to require an applicant in the position of Mr. Walls to go through the motions of examining the premises and applying for them in the face of an expressed intention not to rent them to a Negro, before it can be said that there was a breach of section 3(a). I do not think that such a requirement is reasonable. The purpose of the Code is to bring about a state of affairs in which the recognition that every person is free and equal in dignity and rights irrespective of race or colour would find a realization in the conduct of residents of this Province. Effect could not be given to this purpose if a narrow and restrictive interpretation were placed on the language of S3(a). In coming to this conclusion I am mindful of the provisions of section 10 of the Interpretation Act R.S.O.1960, chapter 191, which reads as follows:

> " Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of anything that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit."

Applying section 10 as I think it must be applied, I have concluded that Mr. Lougheed did deny to Mr. Walls the self contained apartment because of the race or colour of Mr. Walls, and that in so doing he

violated not only the spirit but also the letter of section 3(a) of the Ontario Human Rights Code 1961-62.

It remains for me now to make a recommendation as to the course which ought to be taken with respect to the complaint. It was submitted at the hearing that among the possible courses of action were a requirement that Mr. Lougheed write a letter of apology to Mr. Walls, that Mr. Lougheed write a letter to the Chairman of the Ontario Human Rights Commission advising of his intention hereafter to comply with the Code, that Mr. Lougheed be required to include the words "no discrimination" in any future advertisement he may place and that Mr. Lougheed be required to agree to offer accommodation to Mr. Walls when, in the future, he should need it and in the event that such accommodation is not then available, to agree to assist Mr. Walls in finding suitable accommodation including the payment of reasonable expenses. In my opinion none of these suggestions is appropriate in this case. All of them involve some measure of willingness on the part of Mr. Lougheed. I do not believe that Mr. Lougheed feels any remorse for the injustice done to, and psychic wound inflicted upon, Mr. Walls. I cannot believe that any agreement which Mr. Lougheed was required to enter into, given his conviction that he has done nothing wrong, would be worth very much. On the other hand, I do not recommend a prosecution. Mr. Walls has had a publicly

recognized right to be treated like a human being flouted by Mr. Lougheed's insult to his dignity as a human being and a conviction for a summary conviction offence and a fine would not, in my opinion, be a sufficient or satisfactory vindication of Mr. Walls's rights. After a lengthy consideration of the course of action I am about to propose, I have concluded that Mr. Lougheed ought to be required to pay to Mr. Walls the expenses which be incurred in travelling back and forth from where he was living on April 25th, 1968, for the purpose of finding, and until he found, satisfactory alternative accommodation in Windsor. A reasonable estimate of these expenses was shown at the hearing to be a figure slightly in excess of $153.05. It is my recommendation, then, that Mr. Lougheed be required to pay the sum of $153.05 to Mr. Walls. No other course of action would be an adequate deterrent to similar conduct in the future on the part of Mr. Lougheed or others who are inclined to share his views.

In making the recommendation which I have just outlined, I gave consideration to a possible objection to this solution which I feel I should mention even though I have rejected it. The effect of the recommendation, if implemented by a ministerial order, would be that Mr. Lougheed is required, on pain of conviction and fine for disobeying the Minister's order, to pay a sum of money to Mr. Walls. This result can be looked upon as being in the nature of a judgment

for a civil cause of action. Yet it was rendered not by the ordinary courts and, indeed, there may be some doubt as to whether Mr. Walls could have succeeded if he had sued Mr. Lougheed for $153.05 in the ordinary courts for denying him the accommodation. That, in substance, is the objection which, it is not inconceivable, could be made. In my view, however, while the analysis contained in the objection is not invalid the conclusion that Mr. Lougheed may be deprived of those procedural rights he would have in a civil action in a court of law and that Mr. Walls is obtaining indirectly what he could not obtain directly, i.e. something in the nature of a civil judgment, is inconsequential. It appears that the machinery created in Part III of the Ontario Human Rights Code 1961-62 was deliberately created to provide for effective sanctions to be applied to a person who is found by a board of inquiry to have violated the provisions of the Code, after all the Commission's efforts to effect a settlement of the matter have failed as a result of the intransigence of the violator. My opinion is that the Legislature foresaw and intended the very result of which complaint was made in my hypothetical objection.

To sum up, I have concluded that the evidence disclosed that Mr. Lougheed, within the meaning of section 3(a) of the Ontario Human Rights Code 1961-62, did deny to Mr. Walls the self-contained apartment which Mr. Lougheed was offering to rent because of

Mr. Walls's race or colour and I recommend that Mr. Lougheed be required to pay to Mr. Walls the reasonable expenses which he incurred in obtaining suitable alternative accommodation for himself and his wife, which expenses amount to $153.05.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 21st day of August, 1968.

H. Krever

Horace Krever.

17